

## REMARKS

### Remark 1:

Applicant requests the Examiner withdraw Yavitz et al. (US 6,312,450) as an anticipating reference under 35 USC 103(a). Applicant points out the following distinctions between Yavitz et al. and the present invention which preclude the use of Yavitz et al. as an anticipating prior art reference:

Significantly, there is no suggestion or any affirmative statement in Yavitz et al. which would teach or anticipate the delivery of electromagnetic energy to below the surface of the skin in conjunction with the application of wound healing factor to the skin. Clearly, Yavitz et al. does NOT disclose a system comprising the step of treating a subsurface layer of the skin with a source of energy. Yavitz et al. is directed to application of light energy directly to for absorption into the surface of the skin. Yavitz et al. is further directed to the application of light transport modifiers to the skin which modify the transport of light energy within the skin. In contrast, the present invention utilizes wound healing factors applied to the skin, not in order to increase or otherwise modify transport of light energy through the skin, but rather to take advantage of the effect obtained through the use of the present method.

As quoted directly from Yavitz et al. at column1, lines 52-63:

Attempts have been made to minimize injury to the epidermis by removing heat from the epidermal area proximate the area of treatment. This is typically accomplished by delivering a coolant to the epidermis at the area where it is penetrated by the laser beam. However, this adds to the complexity of the equipment and the procedure.

It would be advantageous to have a light transport modifier that could be applied to the epidermis to permit the transfer of certain types of electromagnetic energy through the epidermis to the area of treatment without absorption of energy and the resultant detrimental buildup of heat in that area of the epidermis.

Clearly, the utilization of a "light transport modifier" is in order to "permit the transfer of certain types of electromagnetic energy through the epidermis to the area of treatment". This is not the purpose or the

effect of applying wound healing factor to the skin in the present invention.

**Remark 2:**

Applicant requests the Examiner withdraw Rodgers et al. (US 6,455,501) as an anticipating reference under 35 USC 103(a). Applicant points out the following distinctions between Rodgers et al. and the present invention which preclude the use of Rodgers et al. as an anticipating prior art reference:

Wound healing is stimulated by the application of electromagnetic energy. As should be evident by a reading of Rodgers et al., the prior art fails to recognize this. In fact, the prior art is completely silent to this fact. Heretofore, in the treatment of wounds such as described in the specification in the present invention, it has been unknown and unanticipated to use wound healing factors in conjunction with delivery of electromagnetic energy to stimulate collagen biosynthesis in the affected tissue. Rodgers et al. is completely silent with regard to any reference or suggestion at all that electromagnetic energy can be delivered to subsurface tissue along with the topical application of wound healing factors in order to stimulate collagen biosynthesis.

**Remark 3:**

Based on a fair reading of Rodgers et al., it would not be obvious or anticipated to combine the teachings of Yavitz et al. with the teachings of Rodgers et al. Topical preparations are used in Yavitz et al. in order to modify light transport. Their function is not to promote wound healing through their own action. Furthermore, Rodgers et al. fails to suggest or refer in any way delivery of electromagnetic energy of any type at all to subsurface tissue in order to enhance wound healing. With all due respect, applicant submits the claims, as amended, recited patentable subject matter which is novel and unique.

///

**Remark 4: (NO NEW MATTER)**

Applicant submits that the amendments presented herein present no new matter. All of the devices, systems, methods and/or compositions claimed herein are taught in the Drawings, Specification, Claims and Abstract and other portions of the Application as originally filed.

**Remark 5: (REQUEST FOR TELEPHONIC OR IN-PERSON EXAMINER'S INTERVIEW)**

Applicant hereby invites and requests the Examiner to attempt to resolve any further defects, deficiencies, errors or other grounds of rejection or objection to the present application, either on a formal or informal basis, by Telephonic or In-Person Examiner's Interview under 37 CFR 1.133 (see also MPEP 713.01 et seq.). Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully asked that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. Alternatively should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned. Attorney for Applicant(s) can be reached from 9:00 AM-5:00 PM Monday-Friday at telephone number 650-348-1444 or by fax to (650) 348-8655 or by e-mail at RKS@ATTYCUBED.COM.

///

## CONCLUSION

Applicant respectfully submits that for all the foregoing reasons, the claimed subject matter describes patentable invention. Furthermore, Applicant submits that the specification is adequate and that the claims are now in a condition for allowance. No new matter has been entered.

Applicant hereby respectfully requests Examiner to withdraw the cited references as anticipating or obviating prior art, enter these amendments, find them descriptive of useful, novel and non-obvious subject matter, and authorize the issuance of a utility patent for the truly meritorious, deserving invention disclosed and claimed herein.

Without further, Applicant does not intend to waive any claims, arguments or defenses that they may have in response to any official or informal communication, paper, office action, or otherwise, and they expressly reserve the right to assert any traverse, additional grounds establishing specificity and clarity, enablement, novelty, uniqueness, non-obviousness, or other patentability, etc.

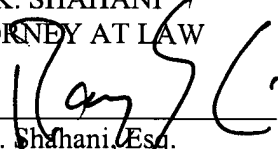
Further, nothing herein shall be construed as establishing the basis for any prosecution history or file wrapper estoppel, or similar in order to limit or bar any claim of infringement of the invention, either directly or under the Doctrine of Equivalents.

///

Respectfully submitted,

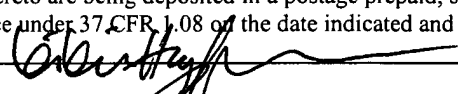
RAY K. SHAHANI  
ATTORNEY AT LAW

Dated: March 8, 2006

By:   
Ray K. Shahani, Esq.  
Attorney for Applicant(s)

Ray K. Shahani, Esq.                      Registration No.: 37,554  
Attorney at Law  
Twin Oaks Office Plaza  
477 Ninth Avenue, Suite 112  
San Mateo, California 94402-1854  
Telephone: (650) 348-1444    Facsimile: (650) 348-8655  
E-mail: rks@attycubed.com

**CERTIFICATE OF MAILING**

I hereby certify that this paper and the documents attached hereto are being deposited in a postage prepaid, sealed envelope with the United States Postal Service using First Class Mail service under 37 CFR 1.08 on the date indicated and is addressed to "Commissioner for Patents, Virginia 22313-1450". Signed:   
Date Mailed: March 8, 2006